

E-Filed 8/16/2011

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

FRANCISCO FREIRIA,

Plaintiff,

v.

eBAY, INC., et al.

Defendants.

Case Number 5:11-cv-1808-JF (PSG)

ORDER¹ DISMISSING CASE
WITHOUT PREJUDICE FOR LACK
OF PROSECUTION

Plaintiff Francisco Freiria (“Freiria”) brought the instant action asserting claims for negligence, breach of contract, and breach of fiduciary duty against Defendants eBay, Inc. (“eBay”), Bank of America N.A. (“Bank of America”), Deborah Braun (“Braun”), and Patrick Anderson (“Anderson”) (collectively “Defendants”). The action arises from a failed 2006 transaction on eBay’s online marketplace. Freiria alleges that he purchased a boat from Braun through the eBay website and made a payment to Anderson’s Bank of America account to complete the transaction; however, he never received the boat.

The case originally was brought in the District of Puerto Rico, but was transferred to this Court on April 7, 2011. Since that time, Freiria has failed to oppose a motion to dismiss filed by

¹This disposition is not designated for publication in the official reports.

1 Bank of America and he did not appear at a July 8, 2011 case management conference.² As a
2 result, the Court ordered Freiria to show cause why this case should not be dismissed for failure
3 to prosecute. Order to Show Cause, filed July 28, 2011. On August 11, 2011, Freiria filed a
4 notice of appearance, indicating that he is in need of additional time to retain legal counsel,³ but
5 would not object to a dismissal without prejudice. Notice of Appearance, filed Aug. 11, 2011. In
6 light of Freiria's statement and his inability to fulfill his obligations, the action is dismissed
7 without prejudice for lack of prosecution.

8 **ORDER**

9 IT IS HEREBY ORDERED that the case be DISMISSED WITHOUT PREJUDICE for
10 lack of prosecution. All scheduled dates in this matter are VACATED, and all pending motions
11 are TERMINATED.

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13 **IT IS SO ORDERED.**

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15 DATED: August 16, 2011

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17 JEREMY FOGEL
18 United States District Judge
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26 ² In addition, eBay asserts that it has been unable to confer with Freiria. Case
27 Management Statement, filed June 28, 2011.

28 ³ Plaintiff's former legal counsel was not admitted to practice in this District and has
withdrawn from the case.

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Case Number 5:11-cv-1808-JF (PSG)

CERTIFICATE OF SERVICE

13 I, the undersigned, hereby certify that I am an employee of the Office of the Clerk,
14 United States District Court, Northern District of California.

15 On August 16, 2011, I served a true and correct copy of the attached document to each of
16 the persons hereinafter listed by placing said copy in a postage paid envelope and depositing
17 said envelope in the United States mail, or by placing said envelope in the outgoing mail
18 delivery receptacle located in the Clerk's Office:

17 Francisco Freiria
18 PMB 771
19 P.O. Box 7891
20 Guaynabo, Puerto Rico 00970-7891

21 DATED: August 16, 2011

For the Court
Richard W. Weiking, Clerk

22 By: _____/s/
23 Diana Munz
24 Courtroom Deputy Clerk
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26
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